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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,928	11/18/2003	James J. Crow	MTV0018US	4254

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CAMPBELL STEPHENSON ASCOLESE, LLP
4807 SPICEWOOD SPRINGS RD.
BLDG. 4, SUITE 201
AUSTIN, TX 78759

EXAMINER

KEEFER, MICHAEL E

ART UNIT	PAPER NUMBER
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2154

MAIL DATE	DELIVERY MODE
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06/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/715,928

Applicant(s)

CROW ET AL.

Examiner

Michael E. Keefer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :5/31/2005, 2/14/2005, 11/18/2003.

DETAILED ACTION

1. This Office Action is responsive to the Application filed 11/18/2003.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 15-22 and 27-31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding **claim 15**, claiming a system comprising a first providing module. A first providing module can be wholly software as pointed out in applicant's specification. This subject matter is not limited to that which falls within a statutory category of invention because it is not limited to a process, machine, manufacture, or a composition of matter. Instead, it includes functional descriptive material. Functional descriptive material does not fall within a statutory category since it is clearly not a series of steps or acts to constitute a process, not a mechanical device or combination of mechanical devices to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and constitute a manufacture, and not a composition of two or more substances to constitute a composition of matter.

Claims 16-18 which depend from claim 15 fail to add any structure to the claim and thus are rejected for the same.

Regarding **claims 19 and 27**, the "computer readable medium," in accordance with Applicant's specification, may be digital and analog

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communication links (i.e. carrier waves) (page 17, [0076] lines 6-8). This subject matter is not limited to that which falls within a statutory category of invention because it is not limited to a process, machine, manufacture, or a composition of matter. Instead, it includes a form of energy. Energy does not fall within a statutory category since it is clearly not a series of steps or acts to constitute a process, not a mechanical device or combination of mechanical devices to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and constitute a manufacture, and not a composition of two or more substances to constitute a composition of matter.

Claims 20-22 and 28-31, which depend from claims 19 and 27 are rejected for the same.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, 11-12, 15-16, 19-20, 23-24, and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Aronberg et al. (US 5933647), hereafter Aronberg.

Regarding **claims 1, 11, 15, 19, 23, and 27-31**, Aronberg discloses:

A method comprising:

in response to a first request on behalf of a requesting instance of a plurality of instances of an application, providing a criterion for identifying a set of instances of the plurality of instances to receive first data and a location of the first data; and (Col. 4, lines 28-56 disclose a profile which is downloaded to an agent which contains a criterion and a location (i.e. filename) of data)

providing the first data to the requesting instance when a second request is made on behalf of the requesting instance for the first data upon determining that the requesting instance satisfies the criterion. (Col. 4 lines 56-61 disclose that if the agent meets the requirements of the profile it then requests the distribution (i.e. data) to be downloaded to the agent.)

Regarding **claims 4, 12, 16, 20, and 24 and as applied to claims 1, 11, 15, 19, 23, and 27-31**, Aronberg discloses:

receiving a message indicating whether the first data was received. (It is inherent in the TCP/IP networking protocol that an ACK packet is sent if data is received properly.)

5. Claims 1,4, 8-12, 14-16, 18-20, 22-24, and 26-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Sadowsky (US 5790796).

Regarding **claims 1, 11, 15, 19, 23, and 27-31**, Sadowsky discloses:

A method comprising:

in response to a first request on behalf of a requesting instance of a plurality of instances of an application, providing a criterion for identifying a set of instances of the plurality of instances to receive first data and a location of the

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first data; and (Abstract lines 6-8 disclose sending a master object to a client including fields that indicate what files are available to the client)

providing the first data to the requesting instance when a second request is made on behalf of the requesting instance for the first data upon determining that the requesting instance satisfies the criterion. (Abstract lines 12-17 disclose the client requesting specific files from the master object)

Regarding **claims 4, 12, 16, 20, and 24 and as applied to claims 1, 11, 15, 19, and 23**, Sadowsky discloses:

receiving a message indicating whether the first data was received. (It is inherent in the TCP/IP networking protocol that an ACK packet is sent if data is received properly.)

Regarding **claims 9-10, 14, 18, 22, and 26 and as applied to claims 1, 11, 15, 19, and 23**, Sadowsky discloses:

an index file comprises the criterion and the location; and (the master object is an index file)

the providing the criterion and the location comprises providing the index file. (the master object is provided to the client)

Regarding **claim 8 and as applied to claim 1**, Sadowsky discloses:

the first data comprise one of:

a first executable program for each of the set of instances of the application,

a second executable program to install a third executable program for each of the set of instances of the application, and

a component of the application for each of the set of instances of the application. (Col. 6 lines 30-44 disclose that the data may be software, data, update, or the like, which includes executable programs)

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5, 13, 17, 21, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky as applied to claims 1, 4, 11-12, 15, 19, and 23 above, and further in view of Meizlik et al. (US 6112323), hereafter Meizlik.

Sadowsky discloses all the limitations of claims 5, 13, 17, 21, and 25 except for receiving a negative acknowledgement that the data was received and re-transmitting the data.

The general concept of transmitting a NAK to data that was not properly received, and the server retransmitting data that receives a NAK is well-known in the art as taught by Meizlik. (Col. 3, lines 46-49 teach the use of a NAK message being sent to an improperly received message and the sender then re-transmitting the data.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Sadowsky and the general concept of transmitting a NAK to data that was not properly received, and the server retransmitting data that receives a NAK as taught by Meizlik in order to increase the reliability of data transport.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky as applied to claim 1 above, and further in view of Foster (US 6986134).

Sadowsky discloses all the limitations of claim 7 except for the data being an announcement.

The general concept of distributing an announcement over the network is well known in the art as taught by Foster. (Abstract, Foster teaches that a package may not only be an executable update, but may also be a document (i.e. an announcement))

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Sadowsky with the general concept of distributing an announcement over the network as taught by Foster in order to allow only users of a specific program to know there is a problem with a program prior to having a patch or fix available.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky as applied to claim 1 above, and further in view of Hansen (US 5838907).

Sadowsky discloses all the limitations of claims 6 except that the data transmitted is configuration data.

The general concept of transmitting configuration data over the network via files is well known in the art as taught by Hansen. (Abstract "configuring the device by uploading the configuration file thereto.")

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Sadowsky with the general concept of transmitting configuration data over the network via files as taught by Hansen in order to configure a network device from a central location. (Col. 2 lines 31-36)

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky as applied to claim 1 above, and further in view of Ma et al. (US 5920725), hereafter Ma.

Sadowsky discloses all the limitations of claim 2 except for providing the index file when the index file has been updated.

The general concept of updating old files with new versions when they are changed is well known in the art as taught by Ma. (Abstract lines 12-17 disclose a server updating objects on a client after they have been altered on the server)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Sadowsky with the general concept of updating old files with new versions when they are changed as taught by Ma in order to allow the user to see new updates to the index as quickly as possible.

11. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky as applied to claim 1 above, and further in view of Ma and in further view of Canter et al. (US 2004/0003390), hereafter Canter.

Sadowsky discloses all the limitations of claim 3 except for providing the index file when the index file has been updated and only checking for updates of the index after a certain period of time since the second request, as specified in the second request.

The general concept of updating old files with new versions when they are changed is well known in the art as taught by Ma. (Abstract lines 12-17 disclose a server updating objects on a client after they have been altered on the server)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Sadowsky with the general concept of updating old files with new versions when they are changed as taught by Ma in order to allow the user to see new updates to the index as quickly as possible.

Sadowsky and Ma teach all the limitations of claim 3 except for only checking for updates of the index after a certain period of time since the second request, as specified in the second request.

The general concept of waiting a certain amount of time before polling to see if updates have occurred is well known in the art as well as the concept of exchanging more than one piece of data in a message as taught by Canter. ([0024] teaches a user requesting a certain interval for updates, as well as this request also being a request for data from the sever.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sadowsky and Ma with the general concept of waiting a certain amount of time before polling to see if updates have occurred as well as the concept of

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exchanging more than one piece of data in a message as taught by Canter in order to increase the efficiency of the system.

NATHAN J. FLYNN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael E. Keefer whose telephone number is (571) 270-1591. The examiner can normally be reached on Monday-Thursday 7am-4:30pm, second Fridays 7am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MEK 6/18/2007